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CACH, LLC and
MANDARICH LAW GROUP, LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD A. HADSELL,
Plaintiff,

vs.

CACH, LLC and MANDARICH
LAW GROUP, LLP,
Defendants.

CASE NO. 3:12-CV-0235-L -RBB

**STATEMENT OF MATERIAL
FACTS**

1. On August 24, 2004, Plaintiff opened a credit account with MBNA.
See Affidavit of Sale and Certification of Debt, produced by FIA Card Services
during discovery as FIA005, attached as Exhibit A.

2. The Account contained a promotional 0% annual percentage rate
(APR) on balance transfers and check cash advances though the statement

1 closing date of February 2005. *See* Welcome Letter, produced by FIA Card
2 Services during discovery as FIA031-FIA034, attached as Exhibit B.

3 3. Thereafter, the Account was changed to a “WorldPoints” account
4 when MBNA America Bank, N.A. was renamed as FIA Card Services, N.A. *See*
5 New Card Letter produced by FIA Card Services during discovery as FIA039-
6 FIA042, attached as Exhibit C; West Deposition Transcript, P. 10, L. 3-11, relevant
7 portions attached as Exhibit D.
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10 4. From December 2008 to June 2010, Plaintiff made numerous
11 purchases on his WorldPoints Account at an interest rate of 8.9%. *See* January
12 2009 through February 2011 Statements, previously produced by FIA Card
13 Services during discovery as FIA078-FIA161, attached as Exhibit E; *see also*
14 “Changes to Your Credit Card Agreement,” produced by FIA Card Services during
15 discovery as FIA006, and attached as Exhibit F (documenting interest rate change
16 to 8.9%).
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20 5. Plaintiff made regular payments on Account purchases, up until May
21 12, 2010. *See* Exhibit E (FIA102 details his last payment); *see also* Checks,
22 attached as Exhibit G, which Plaintiff admits to sending as payment – *See* Hadsell
23 Deposition Transcript P. 57, L. 12 to P. 59, L. 6, relevant portions attached as
24 Exhibit H.
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1 6. Plaintiff did not make another payment after May 12, 2010. *See*
2 Exhibit E at FIA078-FIA101.

3 7. On February 9, 2011, the Account was sold, transferred and set over
4 unto CACH, LLC (“CACH”), with full authority to do and perform all acts
5 necessary for collection, settlement, adjustment, compromise or satisfaction of
6 the said claim. *See* Exhibit A. As of that date, there was due and payable on the
7 Account the sum of \$5,606.24, with all just and lawful offsets, payments, and
8 credits having been allowed. *Id.*; *see also* Exhibit E at FIA078. There were no
9 uncredited payments, just counterclaims or offsets against the Account when
10 sold. *See* Exhibit A.

11 8. CACH engaged Mandarich Law Group, LLP (“MLG”) to assist in
12 collecting the debt and sent Plaintiff’s file over in November 2011. *See* Second
13 Amended Complaint ¶20; Exhibit I; P. 25, L. 19-22.

14 9. Plaintiff believes he sent correspondence to MLG “[t]hrough the
15 United States Postal Service” that stated “[s]omething to the effect of, ‘Stop
16 contacting me. Stop writing me letters. Stop phone-calling me. Stop putting me on
17 the computer-generated caller list and leaving messages on my phone. And that I
18 do not owe this debt.’” *See* Exhibit H, L. 13 to P. 34, L. 5.

19 10. Plaintiff cannot identify, even approximately, when he sent the
20 correspondence to MLG. *See* Exhibit H, P. 33 L. 9-10.
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1 11. Plaintiff also cannot identify the address to which the correspondence
2 was addressed. *See* Exhibit H, P. 33, L. 23-24.

3 12. Plaintiff received no indication from MLG that MLG ever received
4 the correspondence. *See* Exhibit H, P. 34, L. 10-12.

5 13. Plaintiff claims he communicated with MLG by telephone, but cannot
6 not affirmatively state when. *See* Exhibit H, P. 30, L. 16-17. His only idea as to
7 the time frame was “[p]ossibly 2010.” *Id.* P. 30, L. 8-9.

8 14. MLG keeps detailed records of correspondence received from debtors
9 and has implemented a standardized system, known as “Eagle,” to document and
10 maintain that correspondence. *See* Vos Deposition Transcript P. 29, L. 19-24,
11 relevant portions attached as Exhibit I.

12 15. The custom and practice of MLG is that any correspondence received
13 from debtors, regardless of delivery, is documented in MLG’s system. *See* Exhibit
14 I, P. 30, L. 8-18. A copy of the correspondence is scanned or imaged into the
15 system so that it may be kept as a part of the debtor’s file. *Id.* at P. 30, L. 19-21.

16 16. MLG searched its system as it relates to Plaintiff and there was no
17 documentation of evidence of any correspondence from Plaintiff to MLG. *See*
18 Exhibit I, P. 30, L. 2-7.

1 17. Likewise, CACH reviewed its records and could find no indication that
2 correspondence was received from Plaintiff. *See* Exhibit D, P. 58, L. 21 to P. 59,
3 L. 7.
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5 18. MLG filed a lawsuit in state court against Plaintiff on behalf of CACH
6 on December 29, 2011. *See* State Court Complaint, attached as Exhibit J. The
7 State Court Complaint included an account stated claim, in the alternative to the
8 breach of contract claim. *Id.*
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10 19. The State Court Complaint included a request for 10% interest in the
11 prayer for relief of the account stated claim. *See* Exhibit J.
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14 DATED: March 12, 2013

MANDARICH LAW GROUP, LLP
CACH, LLC

16 By: /s/Nicole M. Strickler
17 Nicole M. Strickler
18 Attorney for Defendants
19 CACH, LLC and
Mandarich Law Group, LLP
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